

CASE NO.:

Special Leave Petition (crl.) 73 of 2000

Special Leave Petition (crl.) 4141 of 1999

PETITIONER:

AJAIB SINGH

Vs.

RESPONDENT:

VS.

DATE OF JUDGMENT: 11/04/2000

BENCH:

K.T. Thomas, Doraiswamy Raju & S.N. Variava.

JUDGMENT:

S. N. Variava, J.

Leave granted.

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Both these Appeals can be disposed of by this common Order.

Appellants in both appeals were convicted separately by two separate trial courts under Section 15 of the Narcotics Drugs and Psychotropic Substances Act, 1985 (for short the 'NDPS Act'). Each of them was sentenced to undergo rigorous imprisonment for ten years and a fine of Rupees one lakh. In default of payment of fine Appellant Ajaib Singh was to undergo rigorous imprisonment for a period of three years and Appellant Sapinder Singh was to undergo rigorous imprisonment for a period of one year. They filed separate appeals and the High Court of Punjab and Haryana dismissed their appeals by separate judgments and those judgments are now impugned before us. Appellant Ajaib Singh was found to be in possession of 10 kilograms of Poppy husks on 4.6.1996. Appellant Sapinder Singh was found to be in possession of 10 bags each containing 34 kilograms of poppy husks on 23.12.1993. The common question involved in both the appeals is whether poppy husks would fall within the expression "poppy straw".

When the SLPs were heard this Court was not inclined to entertain the SLPs. However, it was submitted, in both the SLPs, that the Appellants had been convicted under Section 15 of the NDPS Act. It was submitted that Section 15 deals with offences relating to "poppy straw", whereas what had been recovered from the Appellants was "poppy husk". It was submitted that the Appellants could not have been convicted unless the offence alleged against them fell strictly within the provisions of the NDPS Act. It was submitted that if the NDPS Act did not provide for any offence in respect of "poppy husk" then the convictions could not be maintained.

As a question of law was being raised notice was issued

limited to this question.

Parties have been heard on the limited question of law. It must be mentioned that arguments have proceeded on an admitted footing that what had been recovered from both the Appellants was "husk" of the opium poppy plant i.e. husk of the plant of the species "Papaver".

Before the arguments of the parties are considered the relevant provisions of the NDPS Act may be set out :

Section 2(xv) "opium" means;

- (a) the coagulated juice of the opium poppy; and
- (b) any mixture, with or without any neutral material, of the coagulated juice of the opium poppy,
- (c) but does not include any preparation containing not more than 0.2 per cent of morphine.

Section 2(xvii) "opium poppy" means -

- (a) the plant of the species *Papaver somniferum* L.; and
- (b) the plant of any other species of *Papaver* from which opium or any phenanthrene alkaloid can be extracted and which the Central Government may, by notification in the Official Gazette, declare to be opium poppy for the purposes of this Act;

Section 2(xviii) 'poppy straw' means all parts (except the seeds) of the opium poppy after harvesting whether in their original or cut, crushed or powered and whether or not juice has been extracted therefrom."

"Section 15. Punishment for contravention in relation of poppy straw. - Whoever, in contravention of any provision of this Act or any rule or order made or condition of a licence granted thereunder, produces, possesses, transports, imports inter-State, exports inter-State, sells, purchases, uses or omits to warehouse poppy straw or removes or does any act in respect of warehoused poppy straw, shall be punishable with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees:

Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees.

Mr. O.P. Sharma for the Appellant Ajaib Singh has submitted that the offence under Section 15 is only in respect of producing, possessing, transporting, importing or exporting inter-State, selling, purchasing, using or omitting to warehouse "poppy straw". Mr. Sharma submits that the terms "poppy straw" as defined in Section 2(xviii), "opium poppy" as defined in Section 2(xvii) and "opium" as defined in Section 2 (xv) all have a common ingredient i.e. "opium". He submits that a conjoint reading of all the above mentioned sub- clauses shows that an offence can only

be in relation to a substance which contains more than 0.2 per cent of morphine. He submitted that the "poppy husk" is non-narcotic. It submitted that it has thus not been defined anywhere or made punishable under the NDPS Act. He submitted that "poppy husk" does not contain more than 0.2 per cent of morphine and thus no offence could be said to have been made out. He submitted that "poppy husk" is not "poppy straw" and that there can be no offence for possession of "poppy husk".

Mr. Rao Ranjit for Appellant Sapinder Singh supported Mr. Sharma. He further submitted that the chemical report shows that what was recovered was "chura post poppy heads". He relied upon certain passages from Modi's Text Book of Medical Jurisprudence & Toxicology wherein it is, inter alia stated as follows :

"Poppy seeds (khas-khas) are innocuous and white in colour, used as a constituent in some foods or are sprinkled over some Indian sweets. It is regarded as a demulcent and a nutritive. The seeds yield a bland oil, known as poppy seed oil (khas khas ka tgel), which is largely used for culinary and lighting purposes"

He also showed to Court the definition of the term poppy in the Shorter Oxford Dictionary and Webster's Dictionary. He also showed to Court the definition of the term husk in Webster's Dictionary. He submitted that the NDPS Act was dealing with substances which affect the cerebral functions and/or the peripheral nervous system and/or the functions of the body. He submitted that it is clear that the "poppy husk" would not have any somniferous poisons which affect on the Central Nervous System of the body. He submitted that "poppy husk" was merely the waste on the top covering of the seed. He submitted that the "poppy husk" was part and parcel of the seed. He submitted that if it was removed from the seed it becomes waste which, by itself, was worthless. He submitted that Section 2(xviii) specifically provides that "seed" is not "poppy straw". He submitted that "poppy husk" being part and parcel of "seed" would not fall within the definition of the term poppy straw.

On the other hand Shri Rajiv Dutta, learned counsel for the respondent - State, has submitted that the provisions of the NDPS Act are very clear. He submitted that under Section 15 an offence is committed if anybody produces, possesses, transports, imports inter-State, exports inter-State, sells, purchases, uses or omits to warehouse "poppy straw". He submitted that the offence under Section 15 is different from the offence under Section 18 which deals with "opium poppy" and "opium". He submitted that "poppy straw" has been defined under the NDPS Act. He submits that it includes all parts of "opium poppy". He points out that the terms "opium poppy" means the plant of the species Papaver. He submitted that the term "all parts" would also include the "husk". He submitted that the husk was not worthless. He submitted that it was not at all necessary that the "husk" form part of the "seed". He submitted that "seed" has been excluded, because in India the "seed" is used as constituent in foods and even sprinkled over some Indian sweets. He pointed out that the seed also yields a bland oil, which is largely used for culinary and lighting purposes. He submitted that for an offence under Section 15 it was not at all necessary that there must be more than 0.2 per cent of morphine in the item

which has been seized.

Mr. Dutta also submitted that this point is being raised for the first time in the Appeals and that it had not been taken up before the lower courts. He submitted that such a point should not be allowed to be raised for the first time in the Appeal.

It is undoubtedly true that this point is being taken up for the first time in the Appeal. However, it is a point of law which would have a bearing on a large number of cases. We, therefore, permit the Appellants to raise this point. It is a point of law which requires to be decided.

We are unable to accept the arguments of Mr. Sharma and Mr. Rao. Under Section 15 the offence is in respect of "poppy straw". Even though the term "poppy husk" has not been defined in NDPS Act, the term "poppy straw" has been defined. The term "poppy straw" includes all parts (except the seeds) of the "opium poppy". "Opium poppy" means the plant of the species *Papaver*. Thus except for the seed all other parts of the plant of the species *Papaver* would fall in the term "poppy straw". To be noted that parts of the plant *Papaver* would fall within the term "poppy straw" even though no juice has been extracted therefrom. For an offence under Section 15 it is not at all necessary that "poppy straw" should have been used or made into "opium". For cultivation, producing, manufacturing, possessing, selling, purchasing, transporting, importing or exporting inter-State or using opium there is a separate offence provided for under Section 18. If the alleged offence is under Section 18, then the question may arise whether the preparation contained more than 0.2 per cent of morphine. For an offence under Section 15, question of considering whether the preparation contains more than 0.2 per cent of morphine does not arise. As seen above even though no juice may have been extracted, so long as it is a *Papaver*, it would still be "poppy straw" if it is a part of the plant *Papaver*.

The Modi's Text Book of Medical Jurisprudence & Toxicology says that a poppy seed is used in foods, sprinkled over sweets and also yields a bland oil, which is used for culinary and lighting purposes. It is because of this that a seed has been excluded from the definition of poppy straw. Poppy seed could be used in food or Indian sweets or made into oil, which is largely used for culinary and lighting purposes only after it is de-husked. Thus the seed would be separated from the husk. The definition of husk as given in Webster's Dictionary, shows that the husk is any covering, especially when it is comparatively worthless. The husk whether it is on the seed or is removed from the seed remains a part of the plant *Papaver*. In the commentaries on NDPS Act by Mr. P.K. Jain it is set out that crushed capsules of poppy of commonly called "poppy husk" or "bhuki" whether extracted or not and that they contain a certain percentage of morphine and are often used as addiction producing intoxicants. Thus it would fall within the definition of the term "poppy straw", which includes all parts of the plant *Papaver*. While seed has been specifically excluded husk has not been excluded, from the definition of the term "poppy straw". Therefore, in our view the producing, possessing, transporting, importing, exporting inter-State, selling, purchasing, using or omitting to warehouse poppy husk would be an offence under

Section 15 inasmuch as poppy husk would fall within the term poppy straw as used in that Section.

In this view of the matter the Appeals would stand dismissed.

JUDIS